### INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting standards</td>
<td>116, 192, 193</td>
</tr>
<tr>
<td>Acquiescence</td>
<td>154–5</td>
</tr>
<tr>
<td>Administrative Appeals Tribunal</td>
<td>533</td>
</tr>
<tr>
<td>Administrator</td>
<td></td>
</tr>
<tr>
<td>Role in voluntary administration</td>
<td>448</td>
</tr>
<tr>
<td>AFSL</td>
<td>264</td>
</tr>
<tr>
<td>Conduct exempt from dealing definition</td>
<td>529</td>
</tr>
<tr>
<td>Dealing definition and</td>
<td>528–9</td>
</tr>
<tr>
<td>Exemptions from AFSL requirements</td>
<td>529</td>
</tr>
<tr>
<td>General licensee obligations under an AFSL</td>
<td>530–1</td>
</tr>
<tr>
<td>Financial services provided 'efficiently, honestly and fairly'</td>
<td>531–2</td>
</tr>
<tr>
<td>Revocation or suspension of licence</td>
<td>532–3</td>
</tr>
<tr>
<td>Meaning of 'make a market for a financial product'</td>
<td>529</td>
</tr>
<tr>
<td>Who needs</td>
<td>527–8</td>
</tr>
<tr>
<td>Agency</td>
<td></td>
</tr>
<tr>
<td>Broker–client relationship and</td>
<td>537–8</td>
</tr>
<tr>
<td>Implied agency</td>
<td>79</td>
</tr>
<tr>
<td>Separate legal entity doctrine and</td>
<td>79–81</td>
</tr>
<tr>
<td>Agents</td>
<td></td>
</tr>
<tr>
<td>Companies entering contracts via</td>
<td>147</td>
</tr>
<tr>
<td>Aggregate theory</td>
<td>48–50</td>
</tr>
<tr>
<td>Allen test</td>
<td>133–4, 135</td>
</tr>
<tr>
<td>Alteration of corporate constitution</td>
<td>132</td>
</tr>
<tr>
<td>Gambotto’s case and</td>
<td>134–9</td>
</tr>
<tr>
<td>Onus of proof</td>
<td>139</td>
</tr>
<tr>
<td>Reaction to Gambotto decision</td>
<td>139–40</td>
</tr>
<tr>
<td>Reform of the compulsory acquisition provisions</td>
<td>140</td>
</tr>
<tr>
<td>Restrictions on the majority’s alteration power</td>
<td>133–4</td>
</tr>
<tr>
<td>When Gambotto’s case tests do not apply</td>
<td>140</td>
</tr>
<tr>
<td>Alternate directors</td>
<td>178</td>
</tr>
<tr>
<td>Amiable lunatic test</td>
<td>332</td>
</tr>
<tr>
<td>Annual financial report</td>
<td>193–4</td>
</tr>
<tr>
<td>Annual general meeting</td>
<td>183</td>
</tr>
<tr>
<td>Apparent authority</td>
<td>150–4, 156, 159</td>
</tr>
<tr>
<td>Acquiescence</td>
<td>154–5</td>
</tr>
<tr>
<td>Application of directors’ duties to takeovers</td>
<td>610</td>
</tr>
<tr>
<td>Bidder company directors’ duties</td>
<td>610</td>
</tr>
<tr>
<td>Target company directors’ duties</td>
<td></td>
</tr>
<tr>
<td>See target company directors’ duties</td>
<td></td>
</tr>
<tr>
<td>Artificial transactions</td>
<td>556–8</td>
</tr>
<tr>
<td>Assets</td>
<td></td>
</tr>
<tr>
<td>Distribution of, ranking of creditors, 482–6</td>
<td></td>
</tr>
<tr>
<td>Recovery of. See recovery of assets</td>
<td></td>
</tr>
<tr>
<td>Associate</td>
<td>582–3</td>
</tr>
<tr>
<td>Categories of</td>
<td>582</td>
</tr>
<tr>
<td>ASX Listing Rules</td>
<td>62, 209, 510, 511, 512–13, 606</td>
</tr>
<tr>
<td>Administration of</td>
<td>519</td>
</tr>
<tr>
<td>Content of</td>
<td>512</td>
</tr>
<tr>
<td>Continuing requirements to maintain listing</td>
<td>513</td>
</tr>
<tr>
<td>Controlling entry into the stock market and</td>
<td>513</td>
</tr>
<tr>
<td>Legal status of</td>
<td>519–20</td>
</tr>
<tr>
<td>Market bids and</td>
<td>601</td>
</tr>
<tr>
<td>Overview of listing requirements</td>
<td>512</td>
</tr>
<tr>
<td>Periodic disclosure and</td>
<td>514</td>
</tr>
<tr>
<td>Regulating supply of information and</td>
<td>513</td>
</tr>
<tr>
<td>Share buy-backs and</td>
<td>228</td>
</tr>
<tr>
<td>ASX Operating Rules</td>
<td>509, 510, 511–12</td>
</tr>
<tr>
<td>Breach of, Australian Securities Exchange powers with respect to</td>
<td>511–12</td>
</tr>
<tr>
<td>ASX Trading Platform</td>
<td>535</td>
</tr>
<tr>
<td>Auctioneering argument</td>
<td>604</td>
</tr>
<tr>
<td>Australian position</td>
<td>604–5</td>
</tr>
<tr>
<td>Auditing and Assurance Standards Board</td>
<td>31, 33</td>
</tr>
<tr>
<td>Auditor’s report</td>
<td>192, 195–6</td>
</tr>
<tr>
<td>Australian Accounting Standards Board</td>
<td>31, 33, 194</td>
</tr>
<tr>
<td>Australian Bureau of Statistics</td>
<td>85, 108</td>
</tr>
<tr>
<td>Australian Company Number</td>
<td>95, 96, 146</td>
</tr>
<tr>
<td>Australian Competition and Consumer Commission</td>
<td>34, 85</td>
</tr>
<tr>
<td>Australian corporate law</td>
<td></td>
</tr>
<tr>
<td>Amending corporations legislation</td>
<td>41</td>
</tr>
<tr>
<td>Civil penalty regime</td>
<td>35–8</td>
</tr>
<tr>
<td>Current scheme</td>
<td>28–9</td>
</tr>
<tr>
<td>History of. See history of Australian corporate law</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction of the courts</td>
<td>34–5</td>
</tr>
<tr>
<td>Jurisdiction of the legislation</td>
<td>31</td>
</tr>
<tr>
<td>Referral of powers</td>
<td>29–30</td>
</tr>
<tr>
<td>Australian Financial Complaints Authority</td>
<td>530</td>
</tr>
<tr>
<td>Australian Financial Services Licence. See AFSL</td>
<td></td>
</tr>
<tr>
<td>Australian Law Reform Commission corporate criminal responsibility review</td>
<td>88</td>
</tr>
<tr>
<td>Australian market licence</td>
<td>507</td>
</tr>
<tr>
<td>Criteria for</td>
<td>507</td>
</tr>
<tr>
<td>Adequate operating rules</td>
<td>507</td>
</tr>
<tr>
<td>Compensation arrangements</td>
<td>508</td>
</tr>
<tr>
<td>Fair, orderly and transparent market</td>
<td>508</td>
</tr>
<tr>
<td>Unacceptable control situation</td>
<td>508</td>
</tr>
<tr>
<td>Australian Market License</td>
<td>508</td>
</tr>
</tbody>
</table>
Australian Prudential Regulation Authority, 34, 248
ASX Australian Investor Study, 497
bidder’s statement and, 596, 597
challenging decisions of, 525–5
continuous disclosure requirements, 549
co-regulation of financial markets with ASIC, 509
Corporate Governance Council, 514
Corporate Governance Principles and Recommendations, 62–3, 176, 177, 269, 270–1, 274
corporate governance statement, 62–3
Enforcement and Appeals Rulebook, 511
Operating Rules. See ASX Operating Rules
public announcement of takeover and, 588
trading contract between brokers, 535
Australian Securities and Investments Commission (ASIC), 27, 66, 85, 187, 193, 195, 204, 280, 290, 398, 413, 414, 523, 577
amendment of public company constitution and, 132
application for remedial order and, 621
approach to enforcement of financial services and markets, 561
ASX Listing Rules and, 520, 523
auditors and, 438
authorised representatives and, 530
bidder’s statement and, 592, 596, 597, 600
changing proprietary/public status and, 104
civil proceedings brought by, 423–4
class actions and, 560
class orders, 31
class rights and, 143
corporate change of status and, 104, 107, 169
corporate registers and, 191
corporate reinstatement and, 400
corporate secretary and, 149, 175
compensation orders, 288, 296, 306, 346, 424
continuous disclosure obligations and, 519
coop-operative relationships, 34
co-regulation of financial markets with
Australian Securities Exchange, 509
court proceedings in takeovers and, 620
criticism of James Hardie litigation and, 312
declaration of contravention and, 288–9, 346
declaration of unacceptable circumstances and, 573
deed of company arrangement and, 452, 453
deregistration of companies and, 489–90
disclosure documents and, 244, 245, 250–1
disclosure of company information and, 421
disclosure of material interests and, 379
disqualification of directors and, 289, 346
disqualification orders, 38, 288, 306
Enforcement Review Taskforce, 88
equal and selective reductions of capital and, 222
financial assistance transactions and, 236
financial products and, 498, 499
financial services licensing and, 527, 530, 532–3
first creditors’ meeting and, 449
guidance on shares in same class, 201
information provided to, 192
injunction remedy and, 419
inspection of documents lodged with, 423
interpretation of Corporations Act 2001 (Cth), 39–40
liquidators and, 469
lodgement of bidder’s statement with, 596
lodgement of corporate constitution with, 123
Market Disciplinary Panel, 510, 511
Market Integrity Rules, 508, 509, 510, 525
minute books and, 190
not-for-profit entities and, 105
pecuniary penalty orders, 37–8, 288, 296, 306, 346
persons to act as receivers and, 433
proceedings for insider trading by, 553
profile statement and, 249
prosecution of offences by, 34
prospectuses and, 257
public announcement of takeover and, 586, 588
receiving and, 436
register of disqualified persons, 289
registered liquidators and, 447–8
registration of company by, 96
regulation of securities markets, 502–3, 507
Regulatory Guide 111, 598–9
Regulatory Guide 128, 583
regulatory guides, 39
related party transaction and, 381–2
relief from application of Chapter 6D and, 262
relinquishment orders, 38, 288
reservation of company name and, 95
role of, 32, 498
Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and, 37, 506, 561
schemes of arrangement and, 442, 565
share buy-backs and, 227, 228
share division and, 201
shareholders’ agreements and, 131
small proprietary companies and, 102
small proprietary companies financial records and, 192–3
statutory derivative action and, 409–10, 418
stop order power, 250
supervision of financial markets, 508, 511
takeover bid financing and, 595
Takeovers Panel and, 572, 575
third party names and, 158
‘truth in takeovers’ policy, 620
winding up and, 418, 461, 465, 466, 467, 468,
486, 487, 488
withdrawal of takeover offer and, 601
Australian Stock Exchange, 502
Australian Taxation Office, 34, 85
basic prohibition in takeovers, 576
acquisition resulting in an increase in voting
power, 577–8
collective action by investors, 583
definition of ‘associate’, 582–3
exemptions from, 583
creeping takeovers, 583–4
takeovers by consent, 584–5
prohibited share acquisitions, 576–7
relevant interests. See relevant interests in
voting shares
substantial holdings, 578
voting power, 581–2
basic securities transaction, 535–9
agency basis of broker–client relationship,
537–8
Australian Securities Exchange trading contract
between brokers, 535
broker–client contract. See broker–client
contract
broker–client fiduciary relationship, 538–9
buyer–seller contract, 535
clearing and settlement of securities, 536
crossings, 535–6
fiduciary duties, 538
special crossings, 536
Bell Group cases, 344–5, 378
Bentham, Jeremy, 15
bid period, 570, 571, 601, 613, 619, 620
difference between offer period, 588
start date, 596
bidder’s statement, 588, 591–4
copy to target company, 596
lodgement with ASIC, 596
notice that statement has been sent to target
shareholders, 597
to financial market operator, 596
to target shareholders, 596–7
blue sky statements, 251
board of directors, 173–4
delegation of powers, 166–7
directors’ declaration on the financial reports,
194
directors’ report, 194–5
role of, 178–9
types of directors. See types of directors
where members disagree with a decision of,
179–82
Board of Trade (UK)
report on law of partnership, 11
bonus shares, 204
Bosch Report, 302
break fee, 614–15
broker–client contract
implied terms of, 537
terms of, 536
Bubble Act 1720, 8–9, 10
bubbles, 6
South Sea Company, 7
business judgment rule, 285, 314–18, 323
safe harbour, 285, 307
buyer–seller contract, 535
Cadbury Report, 302
Campbell Committee, 545
Campbell Report, 503
capital, 198
distinction between share capital and debt
capital, 198
regulating reductions of. See regulating
reductions of capital
cash flow test of solvency, 322, 427
certificate of registration, 96
chairperson, 175–6
Chapter 6, framework of
policy framework, 569–70
structure of Chapter 6, 568–9
Chief Executive Officer, 174
Chief Financial Officer, 174
Chief Operations Officer, 175
Chinese walls, 552
Chi-X, 503
chose in action, 205
civil and criminal wrongs
company liability for, 84–5
class actions
enforcement of financial services and markets
by, 560
private enforcement of financial services and
markets by, 423, 519, 561–2
class orders, 31
class rights
protection of, 141–3
reduction of share capital and, 223–4
classifying shares, 201–2
bonus shares, 204
employee shares, 204
ordinary shares, 202
preference shares, 202–3
redeemable preference shares, 203–4
cleansing notice, 249
closely-held companies, 366–7
closely-held and widely-held companies, 117–18
Cohen Committee on Company Law
Amendment (UK), 21
commendas, 5, 6
common law contexts in which separate legal entity doctrine may not apply
agency, 79–81
evasion of a legal obligation, 76–9
fraud, 79
common seal, 146
Commonwealth Courts Portal, 467
companies
certificate of registration, 96
closely-held companies, 366–7
closely-held and widely-held companies, 117–18
decision-making within. See decision-making
deed of settlement companies, 8–9, 10, 11, 12, 13, 15
deregistration of, 489–90
internal rules. See internal company rules
listed companies, 496
lodgement and payment of registration, 96
no liability company, 106
obtaining consent, 95
one director/shareholder companies, 123–5
one-person companies, 118–19
other distinctions between public and proprietary companies, 103–4
perpetual succession of, 97
preparation of internal management rules, 95
proprietary companies. See proprietary companies
public companies. See public companies
public/private divide, 100
quasi-partnership companies, 118
registration of. See registration of companies
reinstatement of, 490
reporting and disclosure. See reporting and disclosure
shelf companies, 96
single director/shareholder companies, 188
under the Corporations Act 2001 (Cth), 100
unlimited liability companies, 106
Companies Auditors Disciplinary Board, 33
Companies and Securities Advisory Committee, 225
advantages where target company becomes part of corporate group and, 615
Final Report on Corporate Groups, 92, 116–17
recommendations on corporate groups, 116–17
company
change of status, 107–8
constitution. See corporate constitution as distinct legal person, 268
liability of members to. See liability of members to the company
relationship to other companies, 108–9
company directors
appointment of, members’ powers and, 169
board of directors. See board of directors
contract of service and, 127
definition, 273–4
disqualification of, 289–90, 346
exoneration and relief for breach of duties. See exoneration and relief for directors
public companies, 103–4
reasons for regulating behaviour of, 272–3
removal of, members’ powers and, 170
remuneration of. See remuneration of company directors
single, implied authority of, 150
types of. See types of directors
company information
access to, 420–3
Company Law Advisory Committee, 569
Company Law Review Steering Group (UK), 349–50
company liability
civil and criminal wrongs, 84–5
civil liability in criminal law, 85–8
Criminal Code Act 1995 (Cth), 89
carious liability, 89–90
company limited by guarantee
liability of members to, 105
company limited by shares
liability of members to, 104
company members. See members
company name
change of, members’ powers and, 104
reservation of, 95
company property, 97
company registers, 191
company rules
internal. See internal company rules
company secretary, 96, 146, 175
implied authority of, 149
role of, 149
witnessing of documents by, 146
company type
change of, members’ powers and, 104
compensation orders, 288, 296, 306, 346, 424
limitation period, 290
compulsory acquisitions, 615–16
dissenting minorities and, 617
fair value for securities, 617–18
of minority shares in a takeover, 616–17
compulsory buy-out of securities, 618
concession theory, 46–8, 386
conflicts of interest, 286
disclosure. See disclosure of personal interests
fiduciary obligation to avoid. See fiduciary obligation to avoid conflicts of interests
related party transactions. See related party transactions
consequences of breach of directors’ duties
civil penalties provisions, 288–90
common law and equitable consequences, 287–8
criminal consequences, 290–1
election between regulatory proceedings, 291
Constitutional Conventions, 19
content of disclosure documents, 251–2
forward-looking statements, 252–4
general disclosure requirements, 252
illustrations of Corporations Act 2001 (Cth) s 710(2). See illustrations of s 710(2)
specific disclosure requirements. See specific disclosure requirements
continuou... remedies for breach of obligation, 519
contractual perspective of corporate law, 49, 386
Co-operatives National Law, 99
corporate collapses, 283, 301
HIH Group, 382–3, 429
National Safety Council Victorian Division, 105
OneTel, 307
Qintex Group, 113–14
corporate constitution, 121, 122, 123
additional members' rights under, 172–3
adopting or amending, members' powers and, 168–9
alteration of. See alteration of corporate constitution
breaches of, 128
contractual relationships in, 127–8
meeting procedures and, 183
power of board and members under, 166
corporate contracting
actual and implied authority, 147–8
apparent authority. See apparent authority by ratification, 162
common seal and, 146
corporate contracting companies entering contracts directly, 145–6
corporate contracting companies entering contracts via agents, 147
effect of non-compliance with internal matters on validity of. See effect of non-compliance with internal matters on validity of a contract
implied authority of a company secretary, 149
implied authority of a managing director, 148–9
implied authority of a single director, 150
pre-registration contracts, 162–4
corporate disclosure
continuous disclosure, 513, 514–18
periodic disclosure, 514
corporate enforcement pyramid, 36–7
corporate entities
co-operatives, 99
incorporated associations, 98–9
statutory corporations, 99
corporate finance
concept of capital, 198
financial assistance transactions. See financial assistance transactions
maintenance of capital, 210–13
sources and consequences of, 199
corporate fundraising, 240
raising share capital under Corporations Act 2001 (Cth) Chapter 6D. See raising share capital under Chapter 6D
corporate governance, 266–7
Australian, 267–71
comparative corporate governance, 271–2
definition, 267
returning to target company belongs
to, 615
Companies and Securities Advisory Committee recommendations on, 116–17
definition, 112
duty to act in the best interests of the company and, 335–6
entity model, 113
horizontal and vertical organisation of, 112
liability within, 92
processes of creation of, 112
remedy for oppression and unfairness and, 400
corporate law
Australian. See Australian corporate law
global model of, 42
global or local, 65–6
importance of context, 2
perennial questions, 2–3
twenty-first century, parameters of, 28
Corporate Law Economic Reform Program, 569
corporate law theory
aggregate theory and, 48–50
concession theory and, 46–8, 386
corporate law theory contractual perspective, 49, 386
corporate social responsibility. See corporate social responsibility
economic theories and, 50–3
feminist theory and, 57–9
importance of, 44–5
natural entity theory and, 54–6
organisational perspective and, 56–7
team production theory and, 53–4
corporate liability in tort, 90
corporate liability in tort policy considerations, 90–2
corporate social responsibility, 60–1
enlightened shareholder value and, 61–3
globalisation and, 64–5
stakeholder theory and, 63–4
corporate veil, 76, 78, 273, 321
corporation sole, 95
corporations
classifications of
close... and widely-held companies, 117–18
corporations (cont.)
corporate groups, 110–17
one-person companies, 118–19
definition, 94–5
statutory corporations, 99
types of, 98
Corporations Act 2001 (Cth)
additional members' rights under, 172–3
administration and enforcement of, 31–4
best interests duties under pt 7.7A, 542–3
companies under, 100
consequences for contravention of s 260A,
237–8
constitutional basis of, 29
definition of derivatives under, 500
duty of care, skill and diligence and. See duty
of care, skill and diligence
duty to prevent trading whilst insolvent and,
321–7
fiduciary obligation to avoid conflicts of
interest and, 374–5
framework of Chapter 6. See Chapter 6,
framework of illustrations of s 710(2). See illustrations of s 710(2)
Insolvency Practice Schedule (Corporations),
447
interpretation of
by ASIC, 59–40
complexity of the Act, 40
impact of general law, 41
interpretation provisions, 38–9
issues and debates in, 39–41
judicial interpretation of s 793C, 520–3
listing relationship and s 1101B, 523
members’ powers to make decisions under.
See members' powers to make decisions
under the Corporations Act 2001 (Cth)
proving an exemption under Part 6D.2,
249
raising share capital under Chapter 6D.
See raising share capital under Chapter 6D
regulations and delegated legislation under, 31
related body corporate, 109
Small Business Guide, 40, 102
Corporations and Markets Advisory Committee,
349, 350
abolition of, 34
Corporate Social Responsibility, 62, 64
court appointed receiver, 436–7
court order to wind up the company, 464
COVID-19 pandemic, 462
creditors’ meetings
first creditors’ meeting, 449
second creditors’ meeting, 449–51
creeping takeovers, 583–4
criminal law
company liability in. See company liability in
criminal law
crossings, 535–6
crowd-sourced funding, 242, 263
equity crowd-sourced funding, 263–4
intermediaries, 264
offer, 263, 264
crown jewels defence, 607
crystallisation, 209
damages
breach of statutory contract, 130
Datafin principle, 525
davey Committee, 18, 241
de facto directors, 273, 274–5, 322, 361
debentures
debenture trust deed, 207–8
definition, 207
debt capital, 198
distinction between share capital, 198
debt finance, 206
charges, 207, 209
context of, 206–7
debentures. See debentures
instruments, 207
security interests. See security interests
sources of, 206
decision-making, 166
application of the division of powers, 166–7
control of general meeting and, 166
directors/related companies, 188
declaration of contravention, 298–9, 346
limitation period, 290
deed of company arrangement, 444, 445, 448,
451
administration, 451–2
setting aside, 452–6
deed of settlement companies, 8–9, 10, 11, 12, 13, 15, 16
deregistration of companies, 489–90
derivatives
definition under Corporations Act 2001 (Cth),
500
functions or commercial nature of, 500
futures contract, 500
things that are derivatives, 501
things that are not derivatives, 501
directors’ duties
application of to takeovers. See application of
directors' duties to takeovers
common law and equitable foundations of
current common law position, 304–6
classic case law, 300–1
modern development of the duty of care,
skill and diligence, 302–4
conflicts of interest. See conflicts of interest
consequences of breach of directors’ duties 318–20
duties of loyalty and good faith 306–14
duty not to fetter discretion 351–2
duty of care, skill and diligence 306–14
duty to act in the best interests of the company 321

duty to prevent trading whilst insolvent 321

economic theory 63, 605
corporate law and 50–3
effect of non-compliance with internal matters on validity of a contract 155–6
limitations on the application of the statutory assumptions 162
statutory assumptions 156–60
efficient capital market hypothesis 495–6

Eggleston Principles 569, 577
employee share scheme buy-backs 228
employee shares 204
employees excluded employees 484
insolvent companies and 484
winding up and 469, 488
enforcement of financial services and markets 560
ASIC’s approach to enforcement 561
private enforcement by class actions 561–2
English company law Bubble Act 1720 and 8–9
Companies Act 1862 14–15
eyear company legislation 11
Joint Stock Companies Act 1844 11–13
Joint Stock Companies Act 1856 13–14
nineteenth century 10–11
seventeenth and eighteenth centuries 4–8
summary of developments in 15
enlightened shareholder value 61–3 337, 349–51
equal and selective reductions of capital 219
approval by shareholders 221–2
fair and reasonable to shareholders 219–21
no material prejudice to creditors 221
notice and lodgement with ASIC 222
equity crowd-sourced funding 263
regulation of 263–4
exoneration and relief for directors 291–2
indemnification and insurance 290–7
ratification by the members 292–4
relief by the court 294–6
external administration 427
extract of particulars 192
extraordinary members’ meeting 183–4
Fair Entitlements Guarantee scheme, 484
Fair Work Commission, 85
Fair Work Ombudsman, 85
feminist theory, 57–9
fiduciary duties
intermediaries, 538
fiduciary obligation to avoid conflicts of interest, 355–6
beneficiaries of, 362–3
closely-held companies, 366–7
company about to be wound up, 365–6
director purchases shares from a member, 364–5
brief history of equity and the fiduciary obligation, 356–8
commercial context, 367–8
corporate opportunities for directors, 368–71
multiple directorships, 372–3
provision of fully informed consent, 371–2
 Corporations Act 2001 (Cth) sections 182 and 183, 374–5
nominate categories relationships, 360–2
origin of no conflict rule, 358–9
origin of no profit rule, 359–60
relationship between statute and fiduciary obligations, 373–4
fiduciary relationship
broker–client, 538–9
financial advisers
evolving best interests fiduciary duty, 540–2
statutory best interest test, 539–40
summary of best interests duties, 542–3
financial assistance transactions
problems and benefits of, 230
regulation of. See regulation of financial assistance transactions
financial literacy, 497
financial markets, 494–6
ASX Listing Rules and. See ASX Listing Rules
Australian, background to regulation of, 503–6
certification of market operators, 506
challenging Australian Securities Exchange decisions, 523–5
contents of operating rules, 511
definition, 507
development of Australian stock markets, 502–3
enforcement of. See enforcement of financial services and markets
ex ante regulation, 506
ex post regulation, 506
Financial System Inquiries, 503
intermediaries, 496
investors, 497–8
legal nature of the listing relationship. See listing relationship
licensing as a regulatory strategy, 506
licensing system for, 507
listed companies, 496
misconduct in. See market misconduct
over-the-counter markets, 503
remedies for breach of continuous disclosure obligation, 519
role of ASIC in, 498
supervision of. See supervision of financial markets
financial product advice
definition, 527
general advice, 528
types of, 527
financial products
definition, 498–9, 527
derivatives, 500–1
‘Division 3 financial products’, 546
obligations of advisers and dealer in. See obligations of advisers and dealers in financial products
securities, 499–500
financial records, 190–1, 192–3
failure to comply with requirements for keeping of, 196
financial reporting, 192
financial records, 192–3
Financial Reporting Council, 33
financial reports, 193
annual financial report, 193–4
auditors’ report, 195–6
directors’ declaration on the financial reports, 194
directors’ report, 194–5
financial services and markets, enforcement of. See enforcement of financial services and markets
Financial Services Authority (UK), 34
Financial Services Guide, 533
financial services licensing, 527
Australian Financial Services Licence. See AFSL
obligations of advisers and dealers in financial products, 525–7
Financial System Inquiries, 503
foreign company, 110
 Foss v Harbottle rule, 394, 409
exceptions to, 390
fraud on the minority, 391–3
infringements of personal rights, 391
interests of justice, 393
special majority, 391
ultra vires actions, 391
members’ rights and, 388–90
fraud, 101, 146
separate legal entity doctrine and, 79
fraud on the minority, 134, 283, 292, 391–3
fraud on the power, 340
frustrating action, 609
Future of Financial Advice, 526, 539
futures contract, 500
Gambotto's case, 134–9, 615–16
expropriation of shares and, 394
reaction to, 159–40
when tests in do not apply, 140
general law remedies available to minority shareholders, 395
Gambotto's case and expropriation of shares, 394
infringement of a member's personal rights and, 394–6
general market misconduct, 553–4
general categories of prohibited activity, 553–4
manipulations based on artificial transactions, 556–8
price manipulation, 559
general meeting, 133
control of and decision making, 166
members' powers in, 168
Gladstone Committee, 12
globalisation
Corporate Social Responsibility and, 64–5
golden parachutes, 606
Griffiths Committee, 545
Harmer Report, 322, 326, 436, 444, 472
Hayne Royal Commission. See Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
High Court of Australia
Corporations Act 1989 (Cth) in, 25–6
HIH Group, 382–3, 429
historical development of directors' duties
corporate law and directors' duties from 1900s to present, 282–4
corporate law and directors' duties to 1900, 281–2
history of Australian corporate law, 15–16
beginnings, 1788–1890s, 16
boom and depression, 1850s–1890s, 16–18
Companies and Securities Advisory Committee, 34
cooporative scheme, 1980–1990, 23–5
Corporations Act 1989 (Cth) in the High Court, 25–6
eyearly moves towards uniformity, 1890s–1930s, 18–20
first uniform legislation, 1950s–1980, 20–3
Interstate Corporate Affairs Commission, 22
Ministerial Council for Companies and Securities, 23
National Companies and Securities Commission, 23–4
Rae Committee, 22
Rae Report, 22, 24
Senate Standing Committee on Constitutional and Legal Affairs Report 1987, 24
Senate Standing Committee on Constitutional and Legal Affairs Report 1989, 36, 288, 337, 350
holding company, 109
illustrations of s 710(2)
matters likely investors may reasonably be expected to know, 254–6
nature of the securities, 254
image advertising, 259
incorporated associations, 98–9
information-based market manipulation, 554–6
false or misleading statements, 555–6
misleading or deceptive conduct in relation to a financial product or service, 554–5
information provided to ASIC
extract of particulars, 192
registered office, 192
initial public offerings, 242, 243, 251, 500
prospectuses, 252, 254, 261
injunction remedy, 419–20
civil proceedings brought by ASIC, 423–4
takeovers, 620
inside information, 547–8
insider trading, 544–5
acts that breach the insider trading prohibition, 551–2
‘procure’, 551
tipping, 551–2
basic prohibition, 545
elements of, 285, 321
exceptions and defences to the insider trading prohibition, 552
Chinese walls, 552
general, 552
knowledge test, 550–1
prerequisites to the insider trading prohibition, 545–50
‘Division 3 financial products’, 546
information ‘generally available’, 548–9
‘inside information’, 547–8
‘knowledge’, 546
insider trading (cont.)
material effect, 549–50
‘person’, 546
‘possesses’, 546
remedies for, 553
insolvency, 427–30
ability to pay and, 427–8
compulsory winding up in. See winding up in
insolvency
definition, 427, 461
due and payable and, 428–9
employees and, 484
proving insolvency, 461–2
secured creditors in, 430–2
insolvency law
esential tenets of, 430
importance of, 429
policy tenets of, 459–60
purposes of, 429–30
Insolvency Practice Rules (Corporations), 469
Insolvency Practice Schedule (Corporations),
447, 469
insolvent trading
safe harbour, 324
institutional investors, 167, 498
intermediaries, 496
fiduciary duties, 538
internal company rules
corporate constitution, 123
Memorandum and Articles of Association, 122
objects clauses and ultra vires, 122–3
one director/shareholder companies, 123–5
overview, 122
statutory contract. See statutory contract
International Organization of Securities
Commissions, 34
investors, 497–8
financial literacy of, 497
institutional investors, 168, 498
matters investors likely to know, 254–6
professional investors, 248, 259, 534
retail investors, 264, 497–8
sophisticated, 247–8, 259, 497
James Hardie Industries, 90–1, 309–12, 516–17, 556
Jenkins Committee, 230, 397
joint stock company, 6, 7–8, 9, 10, 11, 100
unincorporated, 6, 10, 11
joint stock principle, 4–5, 6, 7, 8–9, 10
knowledge test, insider trading, 550–1
lack of knowledge defence, 261
Legislative and Governance Forum on
Corporations, 41
liability for defective disclosure under Chapter 6D
civil liability, 260
civil liability to pay compensation, 260
general liability, 259
liability of members to the company, 104
company limited by guarantee, 105
company limited by shares, 104–5
no liability company, 106
unlimited liability company, 106
licensing system for financial markets See
Australian market licence
limited liability, 73–4, 101, 200
application of, 2000 reforms to, 92
Joint Stock Companies Act 1844 and, 12–13
nineteenth century, 11, 212
liquidation, 459
objectives, 460
liquidators
difference between provisional liquidators,
470
duties of, 470–2
notification of, 467
obtaining consent of, 466
powers of, 470
registered company liquidators, 439, 447
registration of, 460–70
responsibilities to the court, 471
listed companies, 496
listing relationship, 519–523
Corporations Act 2001 (Cth) s 1101B and, 523
judicial interpretation of
Corporations Act
2001 (Cth) s 793C, 520–3
lock-up devices, 614–15
lodgement of disclosure documents, 250
exposure period, 250–1
managing director, 174
implied authority of, 148–9
market bids, 601
offer in, 602
steps of, 601
variation and withdrawal of offer in, 602
market misconduct, 543–4
general. See general market misconduct
insider trading. See insider trading
reasons for, 543
remedies for, 560
Marx, Karl, 8, 11
material interests, disclosure of. See disclosure of
personal interests
meetings, 182–3
directors’ meetings, 188
members. See members’ meetings
procedures for, 183
members
liability of to company. See liability of
members to the company
statutory remedies available to, 396
members' meetings
annual general meeting, 183
convening an extraordinary members’ meeting, 183–4
general meeting. See general meeting notice of a meeting, 184–5
proposing a resolution, 184
proxy voting, 186–7
quorum, 185
validation of incorrect procedure, 187–8
voting, 185–6
members’ powers to make decisions under the Corporations Act 2001 (Cth)
adopting or amending the constitution, 168–9
appointing directors, 169
changing company name or type, 104
decisions related to share capital, 170–1
disclosure and voting on directors’ remuneration, 171–2
removing directors, 170
varying the rights attached to shares, 170
members’ rights, 167–8, 386–8
additional rights under the Corporations Act 2001 (Cth) and corporate constitution, 172–3
Foss v Harbottle rule and. See Foss v Harbottle rule
injunction remedy. See injunction remedy
members’ powers in the general meeting, 168
members’ powers to make decisions under the Corporations Act 2001 (Cth). See members’ powers to make decisions under the Corporations Act 2001 (Cth)
members’ reserve powers, 173
personal rights. See personal rights
Memorandum and Articles of Association, 122
Merritt, John Stuart, 11, 47
minority shareholders, 189
dissenting, 617
exit option, 388
general law remedies available to. See general law remedies available to minority shareholders
voice option, 388
minute books, 189–90
Murray Report, 503
National Guarantee Fund, 508
National Safety Council Victorian Division, 105
National Stock Exchange of Australia, 503
natural entity theory, 54–6
no conflict rule, 355, 358–9
no liability company
liability of members to, 106
no profit rule, 355, 359–60
nominee directors, 177–8
non-executive directors, 176–7
not-for-profit entities, 105
obligations of advisers and dealers in financial products, 525–7
definition of retail client, 534–5
disclosures required by providers under Corporations Act 2001 (Cth), 533–4
financial services licensing, 527–30
off-market bids, 585–6
bidder’s intentions, 594–5
bidder’s statement, 591–4
bidder’s voting power, 596
completion of steps in, 600
extensions of offer period in, 601
financing the bid, 595
lodging and serving the bidder’s statement, 596–7
offer. See takeover offer
offer document, 588
public announcement, 586–8
role of the independent expert, 598–600
target’s statement, 597–8
variation and withdrawal of offer in, 600–1
offer information statement, 244–5, 249, 261
offer period, 585, 596, 602, 615
definition, 588
difference between bid period, 588
extensions of, 601
start date, 596
offers that do not need disclosure, 246
personal offers, 246–7
professional investors, 248
proving an exemption under Part 6D.2, 249
rights issues, 248–9
small-scale offers, 246
sophisticated investors, 247–8
twenty investors ceiling, 247
officers of a corporation, 277–80, 322
one director/shareholder companies, 123–5
one-person companies, 118–19
OneTel, 307, 316–17
Opes Prime Stockbroking Ltd, 440–1
oppression or unfairness
remedy for. See remedy for oppression or unfairness
ordinary shares, 202
Organisation for Economic Co-operation and Development
Guidelines for Multinational Enterprises, 64
organisational perspective on corporate law theory, 56–7
over-the-counter markets, 503
parent company, 81
pari passu principle, 459, 483, 484
Parliamentary Joint Committee on Corporations and Financial Services, 33, 526

Corporate Responsibility; Managing Risk and Creating Value, 348

Inquiry into Financial Products and Services, 526

pathfinders, 259
pecuniary penalty orders, 37–8, 288, 296, 306, 346
limitation period, 290
periodic disclosure, 514
perpetual succession, 97
personal rights

disclosure of. See disclosure of personal interests

infringement of, 391, 394–6

poison pills, 607

PPS Register, 210

preference shares, 202–3
redeemable preference shares, 203–4
price manipulation, 559
private appointment, 432–3
procedure for winding up by court order, 465–7
affidavit and, 466
consent of liquidator and, 466
filing and serving originating process, 465–6
hearing of the applicant, 466–7
making a statutory demand, 465
making an application for a winding up order, 465–6
nature of application, 465
publishing notice of the application, 466
steps to be taken after the hearing if winding up order made, 467
steps to be taken before the hearing, 466
process of approval of schemes of arrangement, 441–2
creditors’ meeting, 442–3
second creditors’ meeting, 443
termination of a scheme, 443

Product Disclosure Statement, 504, 533–4
professional investors, 248, 543
profile statement, 244, 245, 249, 257, 261
promoters, 163–4
proper plaintiff principle, 97
proprietary companies, 100–3
application of division of powers and, 100–3
large, criteria for, 102
other differences to public companies, 103–4
replaceable rules, 103
small. See small proprietary companies

prospectuses, 243, 244, 249
continuous disclosure prospectuses, 257
due diligence defence, 261
due diligence for, 260–1
initial public offerings, 252, 254, 261
maximum life of, 257
raising share capital under Chapter 6D and, 249

short-form, 245, 249, 257
specific disclosure requirements, 256–7
takeover offers and, 588, 592, 597
transaction specific, 254

public authority, 94
public companies, 103
application of division of powers and, 166–7
directors, disclosure of material interests and, 379–80
directors of, 103–4
other differences to proprietary companies, 103–4

Qintex Group, 113–14
quasi-partnership companies, 118
quasi-partnerships, 416
quorum, 185

Rae Committee, 22, 554
Rae Report, 22, 24
raising share capital under Chapter 6D, 241
ASIC relief from application of Chapter 6D, 262
basic framework of Chapter 6D, 244–5
crowd-sourced funding. See crowd-sourced funding
defences, 260–1
disclosure documents and, See disclosure documents
liability for defective disclosure. See liability for defective disclosure under Chapter 6D
offer of securities, 245–6
offers that do not need disclosure. See offers that do not need disclosure
overview of disclosure requirements, 244
preparation of prospectus or shorter document, 249
regulation of further disclosure, 257
securities hawking prohibition, 262
terminology and context, 242–3
reasonable reliance defence, 261
receivership, 432
court appointed receiver, 436–7
duties of receiver, 435–6
effects of appointment of receiver, 438
liabilities and indemnities of receiver, 436
order of payment, 437–8
powers of receiver, 433–5
private appointment, 432–3
purpose of, 452–3
relationship with other external administrations, 438–9
recovery of assets, 472–3
insolvent transactions, 477
invalid circulating security interests, 479–80
uncommercial transactions, 476–7
unfair loans, 477–8
unfair preferences, 474–6
unreasonable director-related transactions, 478–9
rectification, 130
redeemable preference shares, 203–4
reduction of share capital, 217–18
class rights and, 223–4
registered company liquidators, 439, 447
registered office, 192
registrable Australian bodies, 110
registration of companies
consequences of registration, 97
registration patterns, 108
registration process, 95–7
regulating reductions of capital, 218
authorised reductions, 218–19
equal and selective reductions. See equal and selective reductions of capital
protecting interests affected by a reduction, 222–3
regulating secondary sources of information, 258
image advertising, 259
pathfinders, 259
regulation of broker–client relationship
basic securities transaction. See basic securities transaction
evolving financial adviser best interests fiduciary duty, 540–2
financial adviser statutory best interest test, 539–40
summary of financial adviser best interests duties, 542–5
regulation of financial assistance transactions, 230
consequences for contravention of Corporations Act 2001 (Cth) s 260A, 237–8
exempted transactions, 236–7
material prejudice, 234–6
permitted financial assistance transactions, 231
what is financial assistance, 231–4
regulation of share buy-backs, 225–6
10/12 limit, 226–7, 228
ASX Listing Rules and, 228
employee share scheme buy-backs, 228
equal access scheme, 226–7
on-market buy-back, 228
protecting interests affected by a buy-back, 228–9
selective buy-back, 227–8
reinstatement of companies, 490
related party transactions, 380
application of the law in HIH collapse, 382–3
exceptions to member approval requirement, 384
procedure for obtaining member approval, 381–2
related parties and giving a financial benefit, 380–1
relation-back day, 467–8, 473, 480
relevant interests in voting shares, 578–9
circumstances not giving rise to a relevant interest, 580–1
deemed relevant interests, 579–80
relevant interests held through bodies corporate, 579
relinquishment orders, 38, 288
limitation period, 290
remedial orders, 575, 620–1
remedies
available to minority shareholders. See general law remedies available to minority shareholders
breach of continuous disclosure obligation, 519
for insider trading, 553
for market misconduct, 560
injunction remedy. See injunction remedy statutory, available to members, 396
remedies for breach of the statutory contract, 128
additional members’ remedies under a shareholders’ agreement, 131
additional members’ remedies under statute, 131
seeking a declaration or injunction, 128–30
remedy for oppression or unfairness, 397
grounds for complaint, 400–6
orders, 407–8
standing, 398–9
statutory derivative action and, 414
type of conduct, 399–400
remuneration of company directors
disclosure and voting, members’ powers and, 171–2
replaceable rules, 95, 121, 122, 123, 148, 166, 168, 169, 170, 173, 174, 175, 178, 183, 185, 186, 187, 188, 190, 214, 421
breaches of, 128
companies which cannot use, 126
proprietary companies, 103
reporting and disclosure, 189
auditor’s report, 192, 195–6
corporate registers, 191
financial records, 190–1
financial reports, 191
information provided to ASIC. See information provided to ASIC
minute books, 189–90
retail client, 499
definition, 534–5
retail investors, 264, 497–8
rights issues, 248–9
Ripoll Committee, 539
Ripoll Report, 526
Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 88, 262, 266, 271, 280, 284, 355, 504–5, 561
Royal Commission (cont.)
ASIC and, 37
recommendations, 505
terms of reference, 505
Royal Commission on company law (Ghana), 21

Salomon's case
adoption of, 74–6
importance of, separate legal entity doctrine, 72–4
schemes of arrangement, 439–40, 565–6
must involve an arrangement or compromise, 440–1
process of approval of. See process of
approval of schemes of arrangement
secured creditors, 430–2, 479
securities, 494
basic transaction of. See basic securities
transaction
bid class, 585–6, 590, 591, 597, 598, 602, 616, 617, 618
clearing and settlement of, 536
compulsory buy-out of, 618
definition, 245, 499–500, 585
ED securities, 516
fair value for in compulsory acquisitions, 617–18
listed, content of disclosure documents for, 257
offer of, 245–6
quotation of, 257
transfer of in equity markets, 509
Securities Commission of New Zealand, 34
Securities Exchange Commission (USA), 34
security interests, 208–9
circulating security interests, 208, 209
definition, 208–9
invalid circulating security interests, 479–80
non-circulating security interests, 209
priority rules, 210
registration of, 210
separate legal entity doctrine, 70–2
adoption of Salomon's case, 74–6
arguments for limitation of operation of, 91
common law contexts in which doctrine may
not apply. See common law contexts in
which separate legal entity doctrine may
not apply
exceptions to, 76
importance of Salomon's case, 72–4
statutory provisions avoiding, 81
shadow directors, 273, 275–6, 277, 322, 361
share acquisitions prohibited, 576–7
resulting in an increase in voting power, 577–8
share buy-backs, 224
problems and advantages of, 224–5
regulation of. See regulation of share buy-backs
share capital
alteration of, 216–17
decisions relating to, members' powers and, 170–1
distinction between debt capital, 198
raising under Corporations Act 2001 (Cth)
Chapter 6D. See raising share capital
under Chapter 6D
reduction of. See reduction of share capital
share dividends. See dividends
share finance
classifying shares. See classifying shares
legal nature of a share, 204–6
types of, 199–200
shareholder activism, 167, 181, 182
shareholders
approval of equal and selective reductions of
capital by, 221–2
dissenting minorities, 617
equal and selective reductions of capital and.
See equal and selective reductions of
capital
minority. See minority shareholders
target, bidder's statement and, 596–7
shareholders' agreement
remedies for breach of statutory contract and, 131
shares
bonus shares, 204
classification of. See classifying shares
employee shares, 204
legal nature of, 204–6
preference shares, 202–3
redeemable preference shares, 203–4
relevant interest in voting shares. See relevant
interests in voting shares
self-acquisition and control of, 217
varying rights attached to, members’ powers
and, 170
shelf company, 97
short-term target company defensive strategies,
605, 607
‘crown jewels’ defence, 607–8
litigation, 608–9
revised profit forecast or dividend policy, 607
white knight defence, 608
single director/shareholder companies
decision-making in, 188
small–medium enterprises, 246, 263
small proprietary companies, 102
appointment of auditor and, 195
financial records and reports and, 192–3
Smith, Adam, 5, 7, 8, 11, 47
societas, 5, 6
solvency
  cash flow test of, 322, 427
sophisticated investors, 497
South Sea Company, 7, 10
special crossings, 536
specific disclosure requirements, 256
  content of disclosure documents for listed securities, 257
  disclosure of interests, 256
  disclosure of persons, 256
  expiry date, 257
  quotation of securities, 257
stakeholder theory, 61
  corporate social responsibility and, 63–4
Statement of Advice, 533
statutory contract, 125–6
  effect of, 126–8
  interpretation of provisions in, 131–2
  remedies for breach of. See remedies for breach of the statutory contract
statutory corporations, 99
statutory derivative action, 409
  grounds for granting leave, 410–13
  other court orders, 413
  remedy for oppression and, 414
  who may apply for derivative action, 409–10
statutory duty to act in the best interests of the company
  brief history of, 347
  coexistence of equity and statute, 346
  Corporations Act 2001 (Cth) s 181, 347–8
  international comparison, 349–51
  statutory injunctions, 128
stock exchanges
  definition, 495
  functions of, 495
  supervision of financial markets, 508–11
  co-regulation between ASIC and Australian Securities Exchange, 509
  enforcement of listing, operating and market integrity rules, 510–11
  legal effect of listing, operating and market integrity rules, 510
  listing, operating and market integrity rules, 509–10
  market participants and, 509, 511, 544
  operation of the market by Australian Securities Exchange, 509
takeover bids, 585
  definition, 585
  off-market bids. See off-market bids
takeover defences, 602–3
  application of directors’ duties. See application of directors’ duties to takeovers
  auctioneering argument. See auctioneering argument
  break fee, 614–15
  challenging defensive actions before the Takeovers Panel, 613–14
  fiduciary argument, 604
  frustrating action, 609
  lock-up devices, 614–15
  passivity argument, 603
  types of target activity by target. See target company defensive activity
takeover offer, 588
  bid period. See bid period conditions in, 589
  consideration in, 588
  defeating conditions, 589, 590, 600, 601, 609, 613, 620
  maximum and minimum acceptance conditions, 589–90
  offer period. See offer period
takeovers
  alternatives to, 565–6
  concept of control, 506
  creeping takeovers, 583–4
  defences in relation to, 619–20
  dispute resolution in, 570–5
  framework of Corporations Act 2001 (Cth) Chapter 6 and. See Chapter 6, framework of injunctions, 620
  liabilities in relation to, 618–19
  market bids. See market bids
  options for, 564–5
  reasons for regulation of, 567–8
  remedial orders by a court, 620–1
  takeover activity in Australia, 567
takeovers by consent, 584–5
  Takeovers Panel, 33, 564, 570–2, 608, 613, 620
  applications to, 572
  ASIC and, 572
  bid period and, 588
  challenge of defensive actions and, 613–14
  challenges to, 575–6
  declaration of unacceptable circumstances, 573, 577, 587, 605
takeovers by consent
  directors’ recommendations and, 598
  frustrating action and, 609, 612
  Guidance Note 12, 613, 614
  lock-up devices and, 615
  misstatements and, 619
  non-disclosure or misleading statements and, 594
  proceedings, 571–2
  ‘unacceptable circumstances’, 573–5
takeover company defensive activity, 605–6
  consequences of, 605
  long-term defensive strategies, 605, 606–7
  short-term defensive strategies. See short-term target company defensive strategies
target company directors’ duties, 611

general power of management, 611–12

power over transfer of shares, 613

power to issue shares, 612

target's statement, 597–8

directors' recommendation, 598

notice that statement has been sent to bidder, 600

sending the statement to target shareholders, 600

sending the statement to the bidder, 599

team production theory, 53–4

tipping, 551–2

tombstone advertising, 258

twenty investors ceiling, 246, 247, 259

types of directors, 174

alternate directors, 178

chairperson, 175–6

Chief Financial Officer, 174

Chief Operating Officer, 175

corporate secretary, 175

de facto directors, 273, 274–5, 322, 361

director de jure, 361

executive directors, 174

independent directors, 174, 177

managing director or Chief Executive Officer, 174

nominee directors, 177–8

non-executive directors, 176–7

shadow directors, 273, 275–6, 277, 322, 361

ultra vires, 47, 122–3, 391

unacceptable circumstances

definition, 573–5

uncommercial transactions, 476–7

unfair loans, 477–8

United Nations Global Compact, 64–5

United Nations Guiding Principles on Business and Human Rights, 65

unlimited liability company

liability of members to, 106

vicarious liability

company liability and, 89–90

voidable transactions, 216

consequences of, 480

exemplification of, 480–2

recovery of assets. See recovery of assets

transactions not voidable against certain people, 480

voluntary administration, 443–5

administrator’s role in, 448

commencement of, 446–8

creditors’ meetings. See creditor’s meetings

criticism of, 445

deed of company arrangement. See deed of company arrangement

effect of, 446–7

main features of, 444

voluntary winding up, 487

creditors’ voluntary winding up, 487–8

effect of, 488–9

members’ voluntary winding up, 487

voting, members’ meetings, 185–6

proxy voting, 186–7

Wallis Report, 497, 503, 504, 509, 526

whistleblowers, 271

white knight defence, 608, 612, 614

winding up, 414–16, 459, 460

ASIC and, 418

breakdown of mutual trust and, 416

by court order, procedure for. See procedure

for winding up by court order

compulsory winding up in insololvency. See

winding up in insololvency

deadlocks, 417–18

employees and, 469, 488

failure of substratum, 417

public interest and, 418–19

relation-back day, 467–8, 473, 480

under Corporations Act 2001 (Cth) s 461, 486–7

voluntary winding up. See voluntary

winding up

winding up in insololvency, 460–1

court order to wind up the company. See

court order to wind up the company

effect of, 467–9

proving insololvency, 461–2

statutory demands, 462–4, 465

withdrawal of consent defence, 261